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In re Application of:	:	
MUELLER, Rudolf, et al.	:	
U.S. Application No.: 09/786,294	:	DECISION
Attorney's Docket No.: SCHO0050	:	
For: INTERIOR TEXTURED COATING	:	
REMOVER COMPOSITION	:	

This decision is issued in response to applicants' "Petition Under Rule 182" filed 26 August 2002 and the "Request For A Corrected Filing Receipt" filed 23 April 2002. Deposit Account No. 07-1445 will be charged the required petition fee.

### **BACKGROUND**

On 23 February 2001, applicant filed materials to initiate the present application. The transmittal letter included with the submission was titled "Transmittal Letter For A PCT International Application Entering The National Stage In The U.S. As A Designated Or Elected Office Under 35 U.S.C. 371." The Transmittal Letter refers, however, not to an international application filed under the PCT, but to European Application Number 00103882.7 entitled "Method And Apparatus For Determining Characteristics Of A Sample Liquid Including A Plurality Of Substances" (the attached specification bears the same title). The inventors were identified as Rudolf MUELLER, Dietrich WABNER, Hanns-Erik ENDRES, Ilse WURDACK, and Peter PFEIFFER.

The Transmittal Letter also contained a reference to PCT/EP99/05675. Because the Transmittal Letter referred to entry into the national stage under 35 U.S.C. 371 and PCT/EP99/05675 was the only PCT application mentioned, the present application file was created as a national stage of PCT/EP99/05675.

On 11 September 2001, DO/EO/US mailed a Notification Of Missing Requirements indicating that the declaration filed by applicants was not properly executed and that a proper declaration and the surcharge for filing the declaration later than thirty months after the priority date were required.

On 05 April 2002, the DO/EO/US mailed a Notification Of Acceptance and a Filing Receipt indicating that the present application was a national stage of PCT/EP99/05675 with a 35 U.S.C. 371 date of 19 October 2001 and entitled "Thread Oiling."

On 23 April 2002, applicants filed a "Request For A Corrected Filing Receipt." This submission noted that the title on the Filing Receipt was incorrect, as was the reference to PCT/EP99/05675.

On 26 August 2002, applicants filed the "Petition Under Rule 182" considered herein. The petition seeks to have the application treated as a U.S. application filed under 35 U.S.C. 111(a) claiming priority only to European Application No. 00103882.7.

### **DISCUSSION**

Any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). See 37 CFR 1.494(f):

The documents and fees submitted ... must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371, otherwise the submission will be considered as being made under 35 U.S.C. 111.

In addition, section 1893.03(a) of the MPEP states that:

If there are any conflicting instructions as to whether the filing is under 35 U.S.C. 111(a) or 35 U.S.C. 371, the application will be accepted as filed under 35 U.S.C. 111(a).

As noted above, applicants' original Transmittal Letter here specifically identified the accompanying submission as a submission to enter the national stage under 35 U.S.C. 371. However, the only reference to a PCT application on the Transmittal Letter (PCT/EP99/05675) is on an unchecked line and it refers to an application with a different title, description, claims, and inventors from those listed on the Transmittal Letter and set forth in the attached specification. Moreover, the application referred to in detail in the Transmittal Letter (European Application No. 00103882.7) is not a PCT application and therefore was not capable of entering into the national stage under 35 U.S.C. 371. Taken as a whole, the Transmittal Letter and accompanying materials filed 23 February 2001 cannot be interpreted as a clear request to enter the national stage under 35 U.S.C. 371 for any specific international application. Accordingly, the submission is properly treated as a filing under 35 U.S.C. 111(a).

The present petition under 37 CFR 1.182 clarifies the original intent of the 23 February 2001 filing, that is, the filing of a United States application under 35 U.S.C. 111(a) entitled "Method And Apparatus For Determining Characteristics Of A Sample Liquid Including A Plurality Of Substances" (the specification, claims, and drawings were included with the 23 February 2001 submission) with inventors Rudolf MUELLER, Dietrich WABNER, Hanns-Erik ENDRES, Ilse WURDACK, and Peter PFEIFFER. The application file will be corrected to correspond with the applicants' intent.

**CONCLUSION**

Applicants' petition under 37 CFR 1.182 is **GRANTED**.

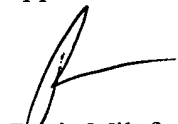
This application file will be treated as a U.S. application filed under 35 U.S.C. 111(a), as discussed above.

The Notification Of Acceptance mailed 05 April 2002 are hereby **VACATED**.

Deposit Account No. 07-1445 will be credited with a refund of \$150, this being the difference between the \$860 basic national fee originally submitted with this application and the applicable \$710 filing fee. This Deposit Account will also be charged \$130 as the petition fee.

The papers in the application file relating to PCT/EP99/05675 sent from the International Bureau to the United States will be removed.

The application will be forwarded to the Office of Initial Patent Examination to treat this application as a filing under 35 U.S.C. 111(a) with a filing date of 23 February 2001. ✓



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